

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**SIMON WRECKING CO, INC.,
SIMON RESOURCES, INC., and
MID-STATE TRADING CO.,**

Defendants.

Civil Action No. 06-928 (ABB)

CONSENT DECREE

I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint ("Complaint") in this matter against Defendants Simon Wrecking Co., Inc. (incorrectly captioned herein as Simon Wrecking, Inc.) and Simon Resources, Inc. pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9606 and 9607, as amended ("CERCLA") seeking reimbursement of response costs incurred or to be incurred in connection with the release or threatened release of hazardous substances at the Malvern TCE Superfund Site ("Site") in Chester County, Pennsylvania. (the "Complaint")

B. Except where specifically stated, Defendants do not admit any statement of fact or law in the Complaint or in this Consent Decree, or liability to Plaintiff arising out of the transactions or occurrences alleged in the Complaint.

C. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix "B," by publication in the Federal Register on September 8, 1983. 48 Fed. Reg. 40658.

D. In response to a release or a substantial threat of a release of a hazardous substance at or from the Site, in February 1996 EPA commenced a Remedial Investigation and Feasibility Study for the Site pursuant to 40 C.F.R. § 300.430.

E. EPA completed a Remedial Investigation Report in January 1997, and issued a Feasibility Study Report in June 1997.

F. A Record of Decision ("ROD") for the Site was issued on November 26, 1997. The ROD was amended by EPA in March 2005.

G. The United States entered into a Consent Decree for the performance of Remedial Design/Remedial Action pursuant to the ROD ("RD/RA Consent Decree"), entered December 13, 1999, with approximately 35 potentially responsible parties ("PRPs") for the Site ("RD/RA Consent Decree PRPs"). United States v. Action Manufacturing Company, Inc., et. al, No. 99-4402 (E.D. Pa.). Pursuant to the RD/RA Consent Decree, the RD/RA Consent Decree PRPs agreed, among other things, to perform and fund the remedial action at the Site.

H. EPA has entered into three multi-party Administrative Orders On Consent for *De Minimis* Settlements with *De Minimis* PRPs in connection with the Site: (1) Docket No. III-98-074-DC, effective September 28, 1999; (2) Docket No. III-CERCLA- 03-2001-0381, effective June 11, 2002; and (3) Docket No. CERC-03-2003-0041, effective January 6, 2004.

I. The United States has entered into a settlement with four owners/operators of the Site. United States v. Chemcene Corp, Inc., et al., No. 99-CV-3715 (E.D. Pa.)("Cost Recovery

Litigation”). Certain RD/RA Consent Decree PRPs, referred to as the Chemclene Site Defense Group (“CSDG”), that intervened as plaintiffs in the Cost Recovery Litigation, also are signatories to this settlement. The consent decree (“Owners/Operators Consent Decree”) was entered on July 7, 2006.

J. In December 2002, the CSDG filed an action in contribution pursuant to Section 113(f) of CERCLA, 42 U.S.C. § 9613(f) against a number of Site PRPs, including the Defendants herein. ABB Inc. f/k/a Fischer & Porter Company, et al. v. Airline Hydraulics Corp., No. 02-8964 (E.D. Pa.) (“Contribution Litigation”). On April 24, 2006, the Court issued its Findings of Fact and Conclusions of Law and Interlocutory Order in the Contribution Litigation (“April 24, 2006 Order”), finding Defendants liable in contribution to the CSDG. On July 7, 2006, the Court issued an Order (“July 7, 2006 Order”) entering the judgment amount. Defendants appealed the April 24, 2006 and July 7, 2006 Orders to the Third Circuit Court of Appeals. In a non-precedential opinion dated July 28, 2008, Third Circuit Court of Appeals affirmed the Orders of the Court.

K. On May 21, 2003, Defendants commenced an action, Simon Wrecking Company, Inc., et al. v America International Underwriters, et al, No. 03-3231 (E.D. Pa.) (“Insurance Litigation”), against three insurers of Defendants, seeking, among other things, a declaratory judgment for payment of claims relating to the Site. Defendants have advised the United States that they have resolved the claims in the Insurance Litigation.

L. On March 2, 2006, the United States filed an action against Defendants, pursuant to Section 107 of CERCLA, 42 U.S.C. § 9607, seeking reimbursement of response costs incurred and to be incurred by the United States in connection with the Site.

M. By Order dated March 14, 2007, the Court granted the United States' Motion for Partial Summary Judgment on Liability as to Defendants.

N. The United States has represented to Defendants that its unreimbursed response costs incurred through March 11, 2008, including interest, total \$4,642,656.76. The United States expects to receive an additional amount of \$1,417,220, as a result of settlements with Site potentially responsible parties other than Defendants, resulting in an estimated outstanding United States' response cost figure through March 11, 2008, of \$3,215,456.76. In addition to that amount, as alleged in the Complaint, the United States will continue to incur future response costs, including oversight costs and litigation costs, in connection with the Site, for which the Defendants would be liable.

O. The United States and Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is **ORDERED**,
ADJUDGED, AND DECREED:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331 and 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over Defendants. Defendants consent to, and shall not challenge, entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree is binding upon the United States and upon Defendants and their successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Defendants under this Consent Decree. The Parties to this Consent Decree hereby agree that the Complaint is deemed amended to add Mid-State Trading Co. as a Defendant in the Complaint.

IV. DEFINITIONS

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and any appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

d. "Defendants" shall mean Simon Wrecking Co., Inc., Simon Resources, Inc. and Mid-State Trading Co.

e. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Insurance Litigation" shall mean the insurance action, Simon Wrecking Company, Inc., et al. v America International Underwriters, et al, Civil Action No. 03-3231. commenced by Defendants against their insurers in connection with the Site,

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.

k. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).

l. "Record of Decision" or "ROD" shall mean the Record of Decision issued for the Site by EPA on November 26, 1997. The ROD includes any amendments to the ROD and any explanation for significant differences.

m. "Related Persons" shall mean shareholders, employees, agents, officers, directors, and successors-in-interest of each Defendant.

n. "Remedial Action" shall mean those activities, as defined in the RD/RA Consent Decree, to be undertaken by the RD/RA Consent Decree PRPs to implement the ROD.

o. "Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25) incurred with respect to the Malvern TCE Superfund Site.

p. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

q. "Site" shall mean the Malvern TCE Superfund Site, including areas defined in 40 C.F.R. § 300.400(e), located at and around 258 N. Phoenixville Pike in Malvern, Chester County, Pennsylvania.

r. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

V. STATEMENT OF PURPOSE

4. By entering into this Consent Decree, the mutual objective of the Parties is for Defendants to make a cash payment to address their alleged liability for the Site as addressed in the Complaint and in the Covenant Not to Sue by Plaintiff in Section VIII, subject to the Reservations of Rights by United States in Section IX.

VI. PAYMENT OF RESPONSE COSTS

5. Defendants shall pay to the EPA Hazardous Substance Superfund the sum of \$550,000.00 (\$541,862.51 principal plus \$8,137.49 accrued interest) as provided for below.

Payment shall be made in three installments as follows:

a. \$175,000 to be paid within 60 days of entry of this Consent Decree, of which \$171,021.67 will be in principal and \$3,978.33 in interest;

b. \$175,000 to be paid within 120 days of entry of this Consent Decree, of which \$172,287.50 will be in principal and \$2,712.50 in interest; and

c. \$200,000 to be paid within 180 days of entry of this Consent Decree, of which \$198,553.34 will be in principal and \$1,446.66 in interest.

6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing EPA Region III, Site Spill ID Number 03-90, and DOJ Case Number 90-11-3-1731/8. Payment shall be made in accordance with instructions to be provided to Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Pennsylvania, following entry of the Consent Decree. Any payment received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day. Confirmation of completion of the wire transfer shall be deemed proof of the time of payment to the United States.

7. At the time of payment, Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and to the Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

8. The total amount of the payment to be paid pursuant to Paragraph 5 of this Consent Decree, shall be deposited in the Malvern TCE Superfund Site Special Account within the EPA Hazardous Substance Superfund, to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

VII. FAILURE TO COMPLY WITH CONSENT DECREE

9. Interest on Late Payments. If Defendants fail to make payment under Paragraph 5 by the required due date, Interest shall accrue on any unpaid amount until the total amount due has been received.

10. Stipulated Penalty.

a. If any amounts due under Paragraph 5 are not paid by the required date, Defendants shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the Interest required by Paragraph 9, \$1,000 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within 30 days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party making payment, the Site name, the EPA Region and Site Spill ID Number 03-90, and DOJ Case Number 90-11-3-08512, and shall be sent to:

U.S. Environmental Protection Agency, Region III
Attention: Superfund Accounting

P.O. Box 360515
Pittsburgh, PA 15251-6515

c. At the time of payment, Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and to Docket Clerk (3RC00), U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103-2029.

d. Stipulated Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

11. If the United States brings an action to enforce this Consent Decree, Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

12. Payments made under this Section shall be in addition to any other remedies or sanctions available to Plaintiff by virtue of Defendants' failure to comply with the requirements of this Consent Decree.

13. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

VIII. COVENANT NOT TO SUE BY PLAINTIFF

14. In consideration of Defendants' payment of response costs as set forth in Section VI (Payment of Response Costs), subject to the provisions of Section VII (Failure To Comply With Consent Decree), and except as specifically provided in Section IX (Reservations of Rights by United States):

a. The United States covenants not to sue or to take administrative action against Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), and Section 7003 of RCRA, 42 U.S.C. § 6973, with regard to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Defendants of their obligations under this Consent Decree.

b. The United States covenants not to sue or take administrative action against Related Persons pursuant to Sections 106 and 107(a) of CERCLA relating to the Site, provided: (i) the Related Person is liable solely based upon the Related Person's alleged affiliation to Defendants, (ii) the Related Person's liability is based solely upon or is derived from the Defendants' liability at the Site under Section 107(a)(3) or (4) of CERCLA, and (iii) the covenant shall be effective only to the extent of such liability of Defendants. This covenant not to sue extends only to the Related Persons as defined in this Consent Decree, and does not extend to any other person.

c. This covenant not to sue is conditioned upon the veracity of the information provided to EPA by Defendant, referenced in Paragraph 25, and the certification in Paragraph 30.

If the information provided is subsequently determined by a court of competent jurisdiction to be false or inaccurate in any material respect, Defendant shall forfeit all payments made pursuant to this Consent Decree and this covenant not to sue, and the contribution protection in Paragraph 21 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from Defendants' information that is false or inaccurate in any material respect.

IX. RESERVATION OF RIGHTS BY UNITED STATES

15. The United States reserves, and this Consent Decree is without prejudice to, all rights against Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 14. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Defendants with respect to:

- a. liability for failure of Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Defendants' ownership or operation of the Site, or upon Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Consent Decree by Defendants;
- e. liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site.

X. COVENANT NOT TO SUE BY SETTLING DEFENDANTS

16. Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Pennsylvania Constitution, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraphs 21 and 22, these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Section IX, but only to the extent that Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation. This covenants set forth in this Paragraph shall be provided by Defendants, including officers, directors, shareholders, and employees of Defendants, but only to the extent that the liability of such persons results from their actions performed within the scope of their duties as officers, directors, or employees of Defendants.

17. Nothing in this Consent Decree shall be deemed to constitute approval or

preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

18. Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person where the person's liability to Defendants with respect to the Site is based solely on having arranged for disposal or treatment, or for transport for disposal or treatment, of hazardous substances at the Site, or having accepted for transport for disposal or treatment of hazardous substances at the Site, if:

a. The materials contributed by such person to the Site containing hazardous substances did not exceed 110 gallons of liquid materials or 200 pounds of solid materials.

b. This waiver shall not apply to any claim or cause of action against any person meeting the above criteria if EPA has determined that the materials contributed to the Site by such person contributed or could contribute significantly to the costs of response at the Site. This waiver also shall not apply with respect to any defense, claim, or cause of action that Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against Defendants.

19. Defendants agree not to assert any claims and to waive all claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any person that has entered into a final settlement with EPA pursuant to Section 113 and/or 122 of CERCLA, 42 U.S.C § 9613 and 9622. This waiver shall not apply with respect to any defense, claim, or cause of action that Defendants may have against any person if such person asserts a claim or cause of action relating to the Site against such Defendants.

XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

20. Except as provided in Paragraph 21, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 22, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

21. a. The Parties agree, and by entering this Consent Decree this Court finds, that Defendants and, subject to the conditions set forth in Paragraph 21.b., Related Persons, are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree;

b. The protection set forth in Paragraph 21.a. shall extend to Related Persons, provided (i) the Related Person is liable solely based upon the Related Person’s alleged affiliation to Defendants, (ii) the Related Person’s liability is based solely upon or is derived from the Defendants’ liability at the Site under Section 107(a)(3) or (4) of CERCLA, and (iii) the covenant shall be effective only to the extent of such liability of Defendants.

c. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States. The “matters addressed” in this Consent Decree do not include those

response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Defendants coming within the scope of such reservations.

22. Defendants agree that, with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree, they will notify EPA and DOJ in writing no later than 60 days prior to the initiation of such suit or claim. Defendants also agree that, with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree, they will notify EPA and DOJ in writing within 10 days of service of the complaint or claim upon them. In addition, Defendants will make a reasonable effort to notify EPA and DOJ within 10 days of service or receipt of any Motion for Summary Judgment, and will make a reasonable to notify EPA and DOJ within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

23. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

XII. ACCESS TO INFORMATION

24. Defendants represent that they have made available to EPA copies of all requested

records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

25. Defendants represent that they have identified for the United States all insurance policies of Defendants of which Defendants have knowledge that relate or refer to the Site, and Defendants represent that they have provided the United States with full and complete copies of any insurance policies of Defendants in their possession that relate or refer to the Site.

26. Confidential Business Information and Privileged Documents.

a. Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Defendants.

b. Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the

name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

27. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

XIII. RETENTION OF RECORDS AND CERTIFICATION

28. Until 10 years after the entry of this Consent Decree, Defendants shall preserve and retain all records now in their possession or control, or which come into their possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

29. After the conclusion of the document retention period in the preceding Paragraph, Defendants shall notify EPA and DOJ at least 90 days prior to the destruction of any such records, and, upon request by EPA or DOJ, Defendants shall deliver any such records to EPA. Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Defendants assert such a privilege, they shall provide Plaintiff with the following: a) the title of the record; b) the date of the record; c) the name and title of the author of the record; d) the name and title of each addressee and recipient; e) a description of the subject of the record; and f) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United

States shall be withheld on the grounds that they are privileged.

30. Defendants hereby certify that, to the best of their knowledge and belief, after thorough inquiry, they have not altered, mutilated, discarded, destroyed or otherwise disposed of any records, reports, or other information relating to their potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against them regarding the Site, and that they have fully complied with any and all EPA requests for information regarding the Site and Defendants' financial circumstances pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XIV. NOTICES AND SUBMISSIONS

31. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Defendants, respectively.

As to the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611

As to EPA:

Joan A. Johnson (3RC41)
Office of Regional Counsel

U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

Charlie Root (3HS21)
Remedial Project Manager
U.S. EPA
1650 Arch Street
Philadelphia, PA 19103-2029

As to Defendants:

Sharon O. Morgan, Esq.
Fox Rothschild LLP
919 North Market Street
Wilmington, DE 19899-2323

XV. RETENTION OF JURISDICTION

32. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

XVI. INTEGRATION/APPENDICES

33. This Consent Decree constitutes the final, complete, and exclusive understanding between the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree.

XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

34. This Consent Decree shall be lodged with the Court for a period of not less than 30 days for public notice and comment, including an opportunity for a public meeting in the affected area. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this

Consent Decree is inappropriate, improper, or inadequate. Settling Defendant consents to the entry of this Consent Decree without further notice.

35. If for any reason this Court should decline to approve this Consent Decree in the form presented, this Consent Decree is voidable at the sole discretion of any party and the terms of the Consent Decree may not be used as evidence in any litigation between the Parties.

XVIII. SIGNATORIES/SERVICE

36. Each undersigned representative of the Parties to this Consent Decree certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

37. Defendants hereby agree not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Defendants in writing that it no longer supports entry of the Consent Decree.

38. Defendants shall identify on the attached signature page the name and address of an agent who is authorized to accept service of process by mail on their behalf with respect to all matters arising under or relating to this Consent Decree. Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and in any applicable local rules of this Court, including but not limited to, service of a summons. The Parties agree that Defendants need not file an answer to the Complaint in this action unless or until the Court expressly declines to enter this Consent Decree.

IX. FINAL JUDGMENT

39. Upon approval and entry of this Consent Decree by the Court, this Consent

Decree shall constitute the final judgment between the United States and Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED, this _____ Day of _____, 2008.

ANITA B. BRODY
UNITED STATES DISTRICT JUDGE

THE UNDERSIGNED PARTIES enter into this Consent Decree in *U.S. v. Simon Wrecking, et al.*, relating to the Malvern TCE Superfund Site.

FOR THE UNITED STATES:

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